

## DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR  
455 Golden Gate Avenue, Tenth Floor  
San Francisco, CA 94102  
(415) 703-5050



December 15, 1999

David A. Billings, General Counsel  
Southern California Soil & Testing, Inc.  
6280 Riverdale Street  
San Diego, CA 92120

Re: Public Works Case No. 99-031  
Caltrans San Diego County Highway Construction Project  
Profilograph Services

Dear Mr. Billings:

This constitutes the determination of the Director of the Department of Industrial Relations regarding coverage of the above-named project under the public works laws and is made pursuant to Title 8, California Code of Regulations section 16000(a). Based upon my review of the documents submitted and the applicable laws and regulations pertaining to public works, it is my determination that the work being done by Southern California Soil & Testing, Inc., on the San Diego County Highway Construction Project ("Project") is a "public works" within the meaning of Labor Code sections 1720(a) and 1772.

Myers-Rasmussen is the general contractor for the Project under a public works contract with the California Department of Transportation ("Caltrans"). Southern California Soil & Testing, Inc., is a professional engineering firm providing profilograph services to Caltrans. The profilograph services are being rendered in connection with the construction of a highway in the County of San Diego.

Section 10-1.37 of the Notice to Contractors and Special Provisions for Construction on State Highway ("Notice to Contractors") requires that the top surface of the uppermost layer of asphalt concrete surfacing be profiled by the contractor using a profilograph in accordance with California Test 526. See also Section 40-1.10 Final Finishing, Standard Specifications, State of California, Business, Transportation and Housing Agency, Department of Transportation, July 1999.

The profilograph consists of a frame supported by wheels and is used to test the evenness of road surfaces. Walking along side

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the profilograph, the engineering technician wheels the device over a newly constructed road surface. The profilograph measures the severity of the bumps in the road and records this data on a tape. The tape then is used to locate the bumps that are out of tolerance and in need of being ground out.

Labor Code section 1720(a) generally defines public works to mean "[c]onstruction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds . . . ." In this case, the Project is a public works project because it involves a contract between Caltrans and Myers-Rasmussen for the construction of a highway that is being paid for out of public funds. Your question is whether the profilograph services being performed by Southern California Soil & Testing, Inc., is covered under prevailing wage laws.

Labor Code section 1772 states that "[w]orkers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." The work performed by Southern California Soil & Testing, Inc., is being performed in the execution of a contract for public work. Under section 1772, its employees are deemed to be employed on a public work. Therefore, prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,

  
Stephen J. Smith  
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting Chief,  
DLSR  
Marcy Vacura Saunders, Labor Commissioner  
Henry P. Nunn, III, Chief, DAS  
Vanessa L. Holton, Assistant Chief Counsel